IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3056 OF 2007
WITH

CRIMINAL APPLICATION NOS. 2981, 2982 & 2983 OF 2007

Mohamed Iqbal Shaikh .... Applicant

versus

Shri B.V.Survase
The Asstt. Director of Enforcement
and State of Maharashtra ..... Respondent.

Mr. Anilkumar Singh with Mrs. Sarika Deshpande i/b. M/s. Haresh Mehta & Co. for the applicant.

Mrs. P.H.Kantharia for Respondent no.1.
Mrs. M.H.Mhatre APP for State.

CORAM; A.P. DESHPANDE, J.
DATED; 07TH DECEMBER, 2007

P.C.;

1. These criminal applications involve a common question of law and hence the applications are heard together and are being disposed of by this common order.

2. The respondent no.1, the Assistant Director of Enforcement filed a complaint under section 57 of the Foreign Exchange Regulation Act 1973 in the Court of Chief Metropolitan Magistrate. The complaint has been

filed on 12th July 1993 on account of non compliance of the order dated 31-3-1992 passed by the Assistant Director, Enforcement of Directorate, Bombay under section 50 of the Act. Section 50 postulates that if any person contravenes any of the provisions of this Act other than the sections referred to in section 50, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention. Section 51 provides that in adjudicating an issue under section 50, as to whether the person has committed a contravention of any of the provisions of the Act, an enquiry has to be held after giving reasonable opportunity of hearing to the person concerned. In the present case, it is undisputed that order of penalty has been passed in March 1992 and thereafter in the year 1993 a complaint has been filed under section 57, which is pending on the file of the Metropolitan Magistrate. Section 57 provides that if any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or failes to comply with any of his or its directions or orders, he shall, upon conviction by a court be punishable with imprisonment for a term which may extend to two years or with fine or with both. Thus the requirement for taking recourse to section 57 by the prosecution, is that the person has failed to pay the penalty imposed by adjudicating officer or the

Appellate Board or the High Court. It is an admitted position that the present petitioners have not paid the penalty imposed by the adjudicating officer under the pretext that they have preferred an appeal against the orders passed under section 50 and along with the appeal the stay application has been filed before the Appellate Board. An appeal against order under section 50 is provided before the Appellate Board under section 52 and the Appellate Board has been vested with a discretion to dispense with the deposit of the amount of penalty pending consideration of the appeal. The said power of the Appellate Board find place in the second proviso to sub section 2 of section 52.

3. The learned counsel has placed reliance upon the interlocutory orders passed in some matters wherein the courts have stayed the prosecution launched under section 57, as the Appellate Board had not passed the orders on the stay application. In the present case, the appeal is said to have been filed way back in the year 1992 and till date the applicants claim that no orders are passed on the stay application. If the applicants have failed to secure orders on the stay application when the appeals are pending with the Appellate Board, since the year 1992 the prosecution filed under section 57 cannot be indefinitely stayed.

It is also not in dispute that the applicants have not filed any writ petition in the High Court seeking a writ of mandamus against the appellate board or any other appropriate order as is envisaged under section 52(2) second proviso. Thus the fact remains that non compliance of the order imposing penalty very much continues. It is nowhere the requirement of section 57 that the cause of action for filing of the complaint thereunder would arise only after the Appellate Board decides the matter. Bare reading of section 57 reveals that failure to pay penalty imposed by adjudicating officer is itself punishable and if this be so no indulgence need to be shown to the present applicants.

4. The applicants moved application before Chief Metropolitan Magistrate who is ceased of the complaint filed under section 57 of the FERA and prayed for stay, on the ground that the appeal and stay application is still pending. The CMM has rejected the stay application by placing reliance on a judgment reported in **2006(4) CC 278.**

5. Perused the impugned order. The same does not call for any interference. Hence applications are dismissed.

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